



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Shareholder Suitability

Applicable to:

1. Shareholders of licensed persons

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PART A OVERVIEW

1 Introduction

- 1.1 Shareholders, through the exercise of voting rights or representation on the board, are in a position to influence decisions by which the business and affairs of a licensed person are carried out. It is therefore important that the shareholders of a licensed person are persons of integrity and good reputation, and who maintain a sound financial position in order to minimise risks that could threaten the safety and soundness of a licensed person.
- 1.2 This policy document sets out the shareholder suitability requirements that must be complied with at all times by shareholders of a licensed person.

2 Applicability

- 2.1 This policy document is applicable to a shareholder as defined in paragraph 5.2.

3 Legal provisions

- 3.1 The requirements in this policy document are specified pursuant to—
 - (a) section 91(1) of the Financial Services Act 2013 (FSA) and section 103(1) of the Islamic Financial Services Act 2013 (IFSA) to give full effect to Schedule 6 of the FSA and IFSA, respectively; and
 - (b) section 143 of the FSA and section 155 of the IFSA.
- 3.2 The guidance in this policy document is issued pursuant to section 266 of the FSA and section 277 of the IFSA.

4 Effective date

- 4.1 This policy document comes into effect on 18 August 2016.

5 Interpretation

- 5.1 The terms and expressions used in this policy document shall have the same meanings assigned to them in the FSA and IFSA, as the case may be, unless otherwise defined in this policy document.

5.2 For the purpose of this policy document—

“**S**” denotes a standard, an obligation, a requirement, specification, direction, condition and any interpretative, supplemental and transitional provisions that must be complied with. Non-compliance may result in enforcement action;

“**G**” denotes guidance which may consist of statements or information intended to promote common understanding and advice or recommendations that are encouraged to be adopted;

“**shareholder**” refers to a person that holds an aggregate interest of 5% or more in the shares of a licensed person¹.

6 Policy document superseded

6.1 This policy document supersedes the policy document on *Shareholder Suitability* issued on 8 October 2014.

¹ Interest in shares shall be construed as set out in Schedule 3 of the FSA or IFSA.

PART B REQUIREMENTS ON SHAREHOLDERS

7 General requirements

- S** 7.1 A shareholder must comply with the shareholder suitability requirements set out in paragraphs 8, 9 and 10 on an on-going basis and must not act in a manner that would be detrimental to the safety and soundness of the licensed person.
- G** 7.2 In assessing a shareholder's on-going suitability, the Bank will consider the specific circumstances of the shareholder, the significance of such circumstances and the potential risks posed to the licensed person. Where it is uncertain as to whether a shareholder has complied with the requirements in this policy document, the Bank shall have the full discretion to make that determination. The Bank may exercise its powers under the law, including those that are accorded under section 94(2) or section 234 of the FSA, or section 106(2) or section 245 of the IFSA, as the case may be, where the Bank has determined that the shareholder suitability requirements are not met.
- S** 7.3 Where the Bank requires a shareholder to submit all relevant documents or information, including documents or information relating to the shareholder's associate or related corporations, and their ultimate beneficial owners, for the purpose of facilitating the Bank's on-going assessment of shareholder suitability, the shareholder must submit such documents or information to the Bank.

8 Maintaining honesty, integrity and good reputation

- S** 8.1 A shareholder must not act or, in the case of a corporate shareholder, conduct its business or operations in a manner that would cast doubt on its honesty and integrity as a shareholder of the licensed person.
- S** 8.2 A shareholder must have a good reputation and refrain from acting in a manner that tarnishes or could tarnish its reputation or the reputation of the licensed person.
- G** 8.3 Given the reputational associations between a shareholder and its affiliates, the Bank may, as part of its assessment of a shareholder's compliance with paragraph 8.2, also consider the circumstances of the shareholder's associate and related corporation², as well as their ultimate beneficial owners, and the consequential impact they may have on the reputation of the shareholder or the licensed person.

² In the case of an individual shareholder, the Bank may consider the circumstances of the corporations in which the shareholder holds investments in.

- G** 8.4 Examples of circumstances that may breach paragraph 8.1 or 8.2 are, if a shareholder—
- (a) is subject to a bankruptcy or winding up proceeding;
 - (b) fails, or is likely to fail, to meet its financial obligations as and when they fall due;
 - (c) is, or has been, the subject of any criminal proceedings or convicted of any offence involving dishonesty, fraud or other financial crimes;
 - (d) fails, or is likely to fail, to comply with relevant laws, requirements, conditions or standards issued by a regulatory, professional or government body in Malaysia or any other jurisdiction, or has been, is expected to be or is subject to disciplinary or enforcement action by such bodies;
 - (e) fails, or is likely to fail, to comply with an enforceable undertaking provided to the Minister or the Bank;
 - (f) fails, or is likely to fail, to carry out or implement commitments made by the shareholder to the Minister or the Bank in the course of obtaining an approval for acquisition of interest in shares in the licensed person;
 - (g) engages, or is about to engage, in any business practice that is deceitful or reflects discredit on the shareholder's professional conduct;
 - (h) is, or has been, the subject of any investigation relating to any criminal or regulated financial activity, or has been notified of any impending investigations;
 - (i) is refused registration, authorisation, membership or a licence to carry out a trade, business or profession, or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated; and
 - (j) in respect of an individual shareholder—
 - (i) is, or was, a director of a company that has gone into insolvency, liquidation or administration, or directly concerned in the management of the business of such company or a company referred to in paragraph (c), (g) or (i) above; and
 - (ii) has been dismissed, asked to resign or has resigned from employment, a position of trust, fiduciary appointment or other similar appointments due to concerns about his honesty or integrity.

9 Exercise of influence

- S** 9.1 A shareholder, in exercising its rights as a shareholder of a licensed person, must not act in a manner that is inconsistent with standards of good governance.
- S** 9.2 A shareholder must not exercise its influence in a manner that undermines the safety and soundness of the licensed person or conflicts or could conflict with the effective oversight of the licensed person's group.
- G** 9.3 A shareholder should observe the principles of sound corporate governance, particularly those espoused under the Bank's corporate governance framework and corporate governance codes issued by other bodies such as Bursa

Malaysia and the Securities Commission.

- G** 9.4 Examples of circumstances that may breach paragraph 9.1 or 9.2 are, if a shareholder—
- (a) unduly imposes his interests on the board or senior management in respect of the business or operations of the licensed person; and
 - (b) whether individually or collectively, acts in a manner that disrupts the operations of the board or the licensed person that would be detrimental to the safety and soundness of the licensed person (e.g. shareholder disputes).

10 Financial soundness

- S** 10.1 A shareholder must have adequate control of its financial risks and maintain a sound financial position on a continuous basis so that it can serve as a source of financial strength for the licensed person in the event that capital support is required.
- G** 10.2 Examples of circumstances that may breach paragraph 10.1 are, if a shareholder—
- (a) fails, or is likely to fail, to meet its financial obligations as and when they fall due; and
 - (b) in respect of a corporate shareholder—
 - (i) has, or is likely to have, insufficient assets, capital or reserves to withstand any financial shocks; and
 - (ii) pursues, or is likely to pursue, excessive risks or aggressive expansion plans which are not reasonably supported by adequate financial capacity.